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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,823	03/30/2004	Masayoshi Yamano	50395-265	3063

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EXAMINER
WOLLSCHLAGER, JEFFREY MICHAEL

ART UNIT	PAPER NUMBER
1732	

MAIL DATE	DELIVERY MODE
08/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/811,823	YAMANO ET AL.	
	Examiner	Art Unit	
	Jeff Wollschlager	1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 April 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

It is noted for the record that Examiner Wollschlager has assumed responsibility for this application from Examiner Eashoo.

Response to Amendment

Applicant's amendment filed April 30, 2007 has been entered. Claims 1-5 are pending and under examination.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kusakari et al. (US 2003/00725545 A1) in view of Nakasone et al. (US Pat. 4,725,453).

Kusakari et al. teaches the claimed process of making an optical cable, comprising:

extruding a thermoplastic resin around at least one tension member, which is a FRP containing aramid fibers, and at least one optical fiber (paras. 63-66); and wherein an adhesive/sizing is applied to the aramid tension fibers (para.71).

Kusakari et al. does not teach a FRP made using a matrix containing styrene. However, Nakasone et al. teaches a FRP made using a matrix containing styrene (1:10-25 and 2:30-50). Kusakari et al. and Nakasone et al. are combinable because they are from the same field of endeavor, namely, making optical cables. At the time of invention a person of ordinary skill in the art would have formed used a FRP made using a matrix containing styrene, as taught by Nakasone et al., in the process of Kusakari et al., and would have been motivated to do so to because Nakasone et al. suggests that these materials are used for economic benefit, namely, using materials that are low-cost.

Generally, differences in concentration or temperature ~~will~~ not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. "Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In this instance, the instantly claimed materials and general extrusion process are taught by Kusakari et al. and Nakasone et al.

Even though the instant processing temperature range is not specifically taught by the references, it is submitted that a person of ordinary skill in the art would have found it obvious to have optimized the extrusion temperature, as commonly practiced in the art, in the process of Kusakari et al. in order to provide optimum extrusion performance of the materials.

Response to Arguments

Applicant's arguments filed April 30, 2007 have been fully considered, but they are not persuasive.

Applicant's arguments appear to be on the following grounds:

1. The examiner's "obvious to try" standard is not the legal standard therefore applicant's are not required to assert critical or unexpected results. However, the specification demonstrates the criticality of the claimed temperature range and that claimed temperature range allows for extruding at lower temperatures than the conventional methods thereby yielding improved results.

The arguments are not persuasive for the following reason:

1. The examiner submits that an obvious to try standard was not applied in the office action. The standard applied was that generally discovering the optimum or workable temperature range requires only routine experimentation. The examiner maintains that such temperature optimization is routine in the extrusion arts. The data in the specification makes clear that when the temperature is too low the surface is rough and when the temperature is too high bubbles/bumps appear. The examiner submits this is what an artisan in the extrusion arts would expect.

For example, in the handbook Extruding Plastics – A Practical Processing Handbook (1998), Table 2.15 provides a troubleshooting guide for common extrusion problems and how to solve these problems. The solution for a "rough surface" is to increase the melt temperature. The solution for "bubbles" is to decrease the temperature. The instantly claimed temperature range is above the temperature for forming a rough surface and below the temperature for forming bubbles. As such, the examiner maintains the rejection.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing datof this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff Wollschlager whose telephone number is 571-272-8937. The examiner can normally be reached on Monday - Thursday 7:00 - 4:45, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JW

Jeff Wollschlager
Examiner
Art Unit 1732

August 6, 2007

CHRISTINA JOHNSON
SUPERVISORY PATENT EXAMINER